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ORIGINAL

(91)
7/18/02
WIN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

ALLFIRST BANK

*

Plaintiff,

*

v.

*

CASE NO.: 1:01-CV-786

JOHN M. ORTENZIO

*

J. KAMBO

Defendant.

*

MOTION FOR ENTRY OF ORDER
SHORTENING TIMEFILED
HARRISBURG, PA
JUL 17 2002
MARY E. D'ANDREA, CLERK
Per _____
Deputy Clerk

Plaintiff, Allfirst Bank, by its undersigned counsel, moves for the entry of an order shortening the time for Defendant, John M. Ortensio, to respond to Plaintiff's Motion For Order Pursuant to *F. R. Civ. P.* 56(d) to Friday, July 19, 2002. The grounds for this motion are as follows:

1. This Court on July 16, 2002 ruled on the cross motions for summary judgment. Because the Court determined that there were certain limited material issues in genuine dispute, the Court denied the cross motions for summary judgment on Count III, alleging common law fraud.

2. Although the Court denied the cross motions for summary judgment as to Count III, the Court did determine various fundamental facts as being not in substantial dispute when it rendered summary judgment on Counts I and II.

3. Plaintiff has filed a Motion For Order Pursuant to *F. R. Civ. P.* 56(d) asking the Court to establish that the facts upon which the Court's summary judgment ruling were premised be deemed established for purposes of trial so as to avoid redundant proof being presented on these issues solely to establish a complete trial record.

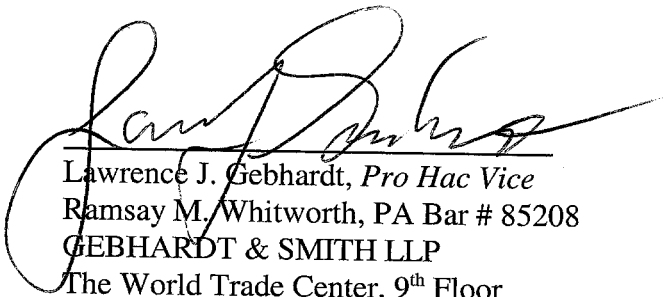
4. Trial of this action is scheduled to start on July 29, 2002 and is to be tried to the Court.

5. If the Defendant takes the full time allotted for a response to the motion for order pursuant to *F. R. Civ. P. 56(d)*, the motion will not be ruled upon prior to the commencement of trial.

6. A ruling on the motion in advance of trial will greatly assist both sides in the preparation for trial and in the efficient presentation of evidence at trial.

7. By telefax sent on Wednesday, July 17, 2002 at or about 9:40 a.m., Plaintiff delivered a copy of the motion for order pursuant to *F. R. Civ. P. 56(d)* and this motion, together with a letter requesting Defendant's counsel to immediately present its position on the motion to the Court. A copy of this letter is attached as Exhibit A to this motion.

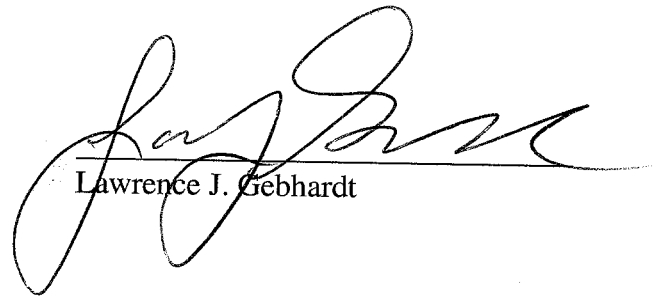
8. There is no reason why the Defendant should be unable to state his position on the motion pursuant to Rule 56(d) by Friday and thereby permit the Court to rule upon the motion in advance of trial.



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Attorneys for Allfirst Bank

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of July, 2002 a copy of *Motion for Entry of Order Shortening Time* was sent by facsimile and U.S. Mail to: Edward I. Swichar, Esquire and Robert A. Burke, Esquire, BLANKROME COMISKY & MCCAULEY LLP, One Logan Square, Philadelphia, PA 19103, *Attorneys for Defendant*.



Lawrence J. Gebhardt

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Refer to File No. 19527

VIA FACSIMILE

Edward I. Swichar, Esquire
BLANK ROME COMISKY & MCCAULEY LLP
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Re: *Allfirst Bank v. Ortenzio*
Case No.: 1:01 -CV - 0786 (Judge Rambo)

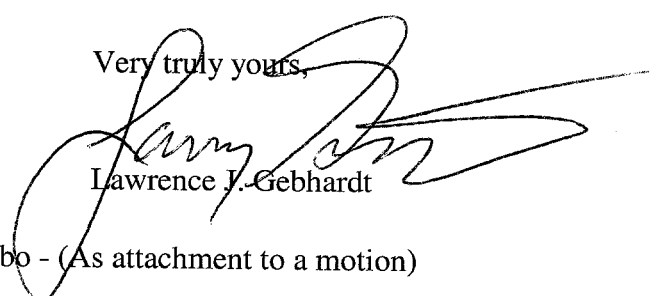
Dear Ed:

As I am sure you are by now aware, Judge Rambo ruled upon the cross motions for summary judgment, granting John Ortenzio's summary judgment as to Counts I and II, but finding genuine factual disputes with respect to the fraud claim and setting that for trial.

In ruling upon the cross motions for summary judgment, Judge Rambo made certain factual determinations on the basis that the determined facts were not in substantial dispute. We have filed a motion under *F. R. Civ. P. 56(d)* for the Court to enter an order that the facts determined as undisputed in the summary judgment process be deemed established for purposes of trial. A copy of this motion accompanies this letter. Such a ruling by the Court will greatly simplify and shorten the trial and enable a more efficient and effective presentation of proof to the issues in genuine dispute.

We have also moved for ordering shortening time requiring the Defendant's response by Friday, July 19, 2002. A copy of this motion accompanies this letter. Because a ruling on this issue is important to both of us and our pre-trial planning and preparation, I would urge that you submit to Judge Rambo the Defendant's position on the motion under *F. R. Civ. P. 56(d)* as soon as possible. A prompt ruling on this motion is to each of our benefits.

Very truly yours,


Lawrence J. Gebhardt

LJG/cjl

cc: The Honorable Sylvia H. Rambo - (As attachment to a motion)
Jamin Gibson